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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/689,222	10/11/2000	Siddhartha Nag	59033-278849	7951

7590 06/05/2006

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EXAMINER

SWEARINGEN, JEFFREY R

ART UNIT	PAPER NUMBER
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2145

DATE MAILED: 06/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/689,222

Applicant(s)

NAG ET AL.

Examiner

Jeffrey R. Swearingen

Art Unit

2145

--Th MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 September 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 26 September 2005. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 4, 5, 24, 25 and 72-87.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.


JASON CARDONE
SUPERVISORY PATENT EXAMINER

Continuation of 5. Applicant's reply has overcome the following rejection(s): claims 24-25 and 74-75 under 35 USC 112, claims 4-5, 72-73, and 76-87 under 35 USC 102b over Montulli.

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments are not persuasive.

Applicant argued Datta failed to teach media aggregation managers. The media aggregation managers can broadly be read to construe switches and routers on a network based on Applicant's definition. Switches and routers were both taught in column 8, lines 22-35.

Applicant argued Datta failed to teach displaying a first projected link utilization in response to a first request to analyze the effect of conveying media packets...over a first path of the plurality of physical paths... Datta polled the network for data and generated information based on the simulated changes of the network in column 5 line 14 and column 6, lines 45-65. A proposed network configuration change was a first request to analyze the effect of conveying media packets...over a first path of the plurality of physical paths... and the projected link utilization was the analysis created from this proposed network configuration change.

Applicant argued Datta failed to teach predicting bandwidth usage for one or more routers. Datta taught the measurement and prediction of traffic volume which was compared with the traffic capabilities of the network. This is predicting bandwidth usage. Column 6, lines 51-61.

Applicant argued Datta failed to teach overlaying a selected path of the plurality of physical paths onto existing bandwidth allocations to determine a projected link utilization associated with the selected path. Datta taught changes in network configuration, which includes path selection.

Applicant argued Datta failed to teach displaying the first path and the second path prioritized based upon one or more predetermined factors. The predetermined factors are further taught in column 6, lines 51-61, where simulated changes to the network configuration are made and the changes to network capacity and balance are compared to determine whether the simulated change represented a preferred network configuration. This comparison of the simulated changes is prioritizing paths based upon one or more predetermined factors, and the predetermined factors can broadly be read to construe even the performance alarms for the network taught throughout Datta.